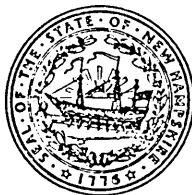


THE STATE OF NEW HAMPSHIRE

83-105-I

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GREGORY H. SMITH



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BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
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T. DAVID PLOURDE

October 7, 1983

Mr. Burton E. Nichols, Program Manager
New Hampshire Highway Safety Agency
117 Manchester Street
Concord, New Hampshire 03301

Dear Mr. Nichols:

By memorandum dated August 18, 1983, you requested an interpretation of the mandatory seven-day sentence for a second DWI conviction for the purposes of determining whether New Hampshire is in compliance with certain incentive grant criteria. In our opinion, the language of RSA 265:82-b requires that the seven days be served in one continuous period of time, with no interruptions, subject to a few specific exceptions.

RSA 265:82-b, I(b), as amended by Laws of 1983, 373:10, provides:

"Upon conviction based on a complaint which alleged that the person has had one or more prior convictions in this state or another state which ... were within the 7 years preceding the date of the second or subsequent offense, said person shall be ... sentenced to imprisonment for a period of not less than 7 consecutive 24 hour periods ..."

Paragraph III of that section states:

"No portion of the minimum mandatory sentence of imprisonment ... imposed under this section shall be suspended or reduced



by the court ... No person serving the minimum mandatory sentence under this section shall be discharged pursuant to authority granted under RSA 651:18, released pursuant to authority granted under RSA 651:19, or in any manner, except as provided in RSA 623:1, prevented from serving the full amount of such minimum mandatory sentence under any authority granted by Title LXII or any other provision of law."

The language used by the legislature exhibits a very clear intent to require a mandatory seven-day jail sentence for a second offense that could not be suspended or reduced. Moreover, the language clearly prohibits a discharge for good conduct or a work release. The only circumstances under which the sentence may be interrupted are illness or emergency pursuant to RSA 623:1.

The language concerning the mandatory seven-day sentence was added to the statute in 1981. Laws of 1981, Chapter 543 included a purpose clause describing the intention of the legislature in enacting the law. The purpose clause noted that the language was specifically intended "to constrict the independent exercise of judicial discretion by the requirement of mandatory sentences" and to dispel "any confusion or contrary interpretation of legislative intent regarding the imposition of mandatory sentences upon conviction of the offense of driving while intoxicated as expressed by the court in *State v. Mullen*, 119 N.H. 703, 406 A.2d 698 (1979)." Laws of 1981, Ch. 543:1.

In *State v. Mullen*, the Supreme Court determined that the language of RSA 262-A:62 (recodified as RSA 265:82) did not clearly express an intent to make the sentences mandatory so as to eliminate judicial discretion in sentencing. The legislature, in enacting Chapter 543 of the Laws of 1983, was specifically eliminating that judicial discretion. The language concerning "7 consecutive 24 hour periods" has not been amended since.

In 1982, the statute (RSA 265:82) was amended to prohibit good conduct discharges and work releases. See Laws of 1982, Ch. 36, introducing the language which now appears in RSA 265:82-b, III cited above. All of this language was carried over to the new DWI penalty statute (RSA 265:82-b) when HB 45 of the 1983 session was enacted.

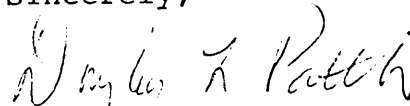
At the March 4, 1981 hearings before the House Judiciary Committee on HB 352, Representative Bosse, the sponsor of the bill, stated

"if there is any doubt as to our intention I believe this bill clearly ... puts it in very plain language that it is the intent of the Legislature to provide a mandatory seven-day consecutive days [sic] sentence, for DWI second offense."

The 1982 amendments, by prohibiting any chance for discharge or release except for illness or emergency, underscored what was already a clear legislative intent to require a mandatory continuous seven day sentence. The 1983 amendment perpetuated this language.

I trust this has answered your questions. Please let us know if you require anything further.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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